

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CENTRAL STATES, SOUTHEAST AND)	
SOUTHWEST AREAS PENSION FUND,)	
and HOWARD McDOUGALL, trustee,)	
)	
Plaintiffs,)	Case No. 07 C 6486
)	
v.)	Judge Hart
)	
MERRILL'S CONTRACTORS, INC.,)	Magistrate Judge Mason
an Illinois corporation,)	
)	
Defendant.)	

Plaintiff's Motion for Summary Judgment

Plaintiff Central States, Southeast and Southwest Areas Pension Fund ("Pension Fund") hereby moves for summary judgment pursuant to Fed.R.Civ.P. 56. In support of its motion, the Pension Fund states as follows:

The Pension Fund filed this action under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), 29 U.S.C. § 1001 *et seq.*, to collect *interim* withdrawal liability payments. Defendant, Merrill's Contractors, Inc. ("Merrill's") triggered four statutory withdrawals from the Pension Fund - three partial withdrawals between 2001 and 2004 and a complete withdrawal in 2005.

The merits of the underlying withdrawal liability assessment are pending before the American Arbitration Association and are not at issue in this case since MPPAA creates a "pay now, dispute later" rule. This action was filed to compel Merrill's, to

comply with their statutory obligations to make withdrawal liability payments while the arbitration is pending. The material facts are undisputed and Central States is entitled to summary judgment as a matter of law.

In support of this motion, Plaintiffs have filed contemporaneously herewith a Memorandum in Support of Central States' Motion for Summary Judgment and Central States' Local Rule 56.1(a)(3) Statement of Material Facts.

WHEREFORE, for the reasons set forth herein and in Plaintiff's Memorandum in Support of its Motion for Summary Judgment, the Pension Fund respectfully requests that the Court enter summary judgment in favor of the Pension Fund and against the Defendant Merrill's Contractor's, Inc. pursuant to Fed.R.Civ.P. 56.

Respectfully submitted,

s/ Thomas M. Weithers
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May 9, 2008

CERTIFICATE OF SERVICE

I, Thomas M. Weithers, one of the attorneys for the Central States, Southeast and Southwest Areas Pension Fund, certify that on May 9, 2008, I caused the foregoing Plaintiff's Motion for Summary Judgment to be electronically filed. This filing was served on all parties indicated on the electronic filing receipt via the Court's electronic filing system.

Respectfully submitted,

s/ Thomas M. Weithers

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